IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No.350 of 1995

Reserved on 2.7.2007

Date of decision 6.8.2007

Rajinder Parsad Appellant

Versus

Smt.Kamla Devi and others Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Appellant: Mr.Rakesh Jaswal, Advocate.

For the Respondents: Mr.K.D.Sood, Advocate.

Rajiv Sharma, J.

By way of this Regular Second Appeal a challenge has been laid by the appellant-plaintiff to the judgment and decree passed by the learned District Judge, Bilaspur dated 20.4.1995 in Civil Appeal No.35 of 1987, whereby the appeal preferred by the plaintiff was dismissed and the judgment and decree of the learned trial court dated 29.1.1987 was upheld.

The brief facts necessary for the adjudication of the second appeal are that one Sh.Thunia who was owner in possession of half share of land comprising in Khasra Nos. 14, 27, 29,25 and 26, measuring 45-7 bighas, situate in Village Barog, Pargana Ajmerpur Tehsil Ghumarwin District Bilaspur. He also owned land measuring 20-4 bighas in Village Ladher.

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

Smt.Ramku defendant No.1 was his wife. He also had one son, Jagdish who died before him. Thunia during his life time made a Will in respect of the land situate at Village Ladher in favour of his grand son Sh.Tajinder Parshad and all the land situate in Village Barog in favour of Smt.Ramnku. On 25.5.1983 Smt.Ramku executed a gift deed in respect of the suit land in favour of her daughter. The appellant-plaintiff hereinafter referred to as the plaintiff for convenience sake, filed a civil suit in the court of Sub Judge Ist Class, Ghumarwin on 30.6.1983 for declaration. According to the plaintiff, the defendant hereinafter referred to as the respondent, Smt.Ramku could not alienate the property on basis of gift deed dated 25.5.1983 in favour of her daughter and the same be declared null and void. The defendants contested the suit filed by the plaintiff and have taken preliminary objections on the grounds of maintainability, valuation, non joinder of necessary parties and cause of action. Primarily the defendant had contended that the case will be governed by Section 14(1) of the Hindu Succession Act, 1956 since she had acquired full ownership rights on coming into force Section 14(1) of the Act. She had further contended that the gift deed dated 25.5.1983 was valid.

The trial court on the basis of the pleadings of the parties had framed the following issues:

1. Whether Ramku was a limited owner and the gift deed dated 25.5.1983 executed in favour of defendant No.2 is illegal? OPP

2. Whether the suit is not maintainable? OPD

3. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD

4. Whether the suit is bad for non-joinder of necessary parties? OPD

5. Whether the plaintiff has no cause of action? OPD

6. Relief

The trial court on the basis of the pleadings and evidence led by the parties had recorded the following findings on the above issues:-

Issue No.1	No
Issue No.2	Yes
Issue No.3	No
Issue No.4	No
Issue No.5	Yes
Relief	The suit is dismissed as per the operative portion of the judgment.

The trial court had dismissed the suit on 29.1.1987. The plaintiff feeling aggrieved by the judgment and decree passed by the learned trial court dated 29.1.1987 had preferred an appeal before the learned District Judge. The learned District Judge had framed the following points for determination:-

1. Whether the findings of the learned trial court are sustainable in the eye of law?
2. Final order.

The learned District Judge had recorded the following findings on the above points :

Point No.1	Yes
Final order	Appeal dismissed as per operative portion of the Judgment.

The appeal was dismissed by the learned District Judge, Bilaspur on 20.4.1995.

The second appeal was admitted on the following substantial questions of law:-

1. Whether in the facts and circumstances of the case sub section (2) of Section 14 of the Hindu Succession Act, 1956 is applicable?

2. Whether the judgment and decree in the facts and circumstances of this case is sustainable in law?

Mr.Rakesh Jaswal, learned counsel for the appellant had strenuously argued that the judgments and decrees of courts below are not sustainable in the eyes of law and as a result the suit of the plaintiff deserves to be decreed. Mr.K.D.Sood, learned counsel for the respondents defendants had supported the judgments and decrees passed by the learned courts below.

I have herd the learned counsel for the parties and have also gone through the records carefully.

The substantial questions of law being interlinked are taken up together.

The Will was executed by Thunia on 19.1.1977. The gift deed made by Smt.Ramku, predecessor in interest of present defendants is dated 25.5.1983. The plaintiff during the trial had only tendered documents Ex.P1 to Ex.P5. Ex.P1 is copy of Will in question, Ex.P-2 is the gift deed, Ex.P-3 is copy of mutation and Ex.P-4 is the copy of jamabandi for the years 1978-79 vide which Smt.Ramku had been entered as owner to the extent of half share and Ex.P-5 is copy of jamabandi for the years 1977-78 The sole question requiring consideration on the basis of the substantial questions of law framed is whether the present case is covered under Section 14(1) of the Hindu Succession Act, 1956 or under Section 14(2) of the Act. This question is no more in res integra on the basis of the judgment of this court reported in **Dalip Chand and**

another vs. Chuhru Ram, AIR 1989 H.P. 44. The Hon'ble Single Judge has held as under:

'The only question which arises for determination in the appeal is whether Smt.Minhon was the full owner of 43 Kanals 19 ½ Marlas land, and, therefore, entitled to make a gift thereof in favour of her nephew, Dalip Chand or else she had only a life estate therein. In other words, whether provisions of S.14(1) of the Hindu Succession Act,1956, are attracted in the instant case or it is to be governed by S.14(2) thereof.

Section 14 of the Hindu Succession Act, 1956, is in the following terms:-

"14.(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.- In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance of arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as Stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub sec.(1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree ,order or award prescribe a restricted estate in such property."

In case the rights acquired by Smt.Minhon are to be governed by sub-sec.(1) of S.14, she would be deemed to have full owner of the aforesaid area of land and, thus, competent to make a gift thereof. In that event the view taken by the courts below would have to be held to be erroneous and the suit of the plaintiff liable to dismissal. In the circumstances of the present case it is obvious that as a widow, Smt.Minhon had right of maintenance which was

a change on the property of her husband, Munshi Ram. In other words, her right to maintenance was a pre-existing right on the date of enforcement of the Hindu Succession Act. Such a right would being the case within the ambit of sub sec.(1) of S.14 of the Hindu Succession Act, 1956. Law in this respect is more than settled. If reference is needed to precedents, it may be made to Vaddeboyina Tulasamma v. Sesha Reddi, AIR 1977 SC 1944; Bai Vajia v. Thakorbhai Chelabhai, AIR 1979 SC 993; Nand Ram v. Vidya, ILR (1985) Him Pra 852 (DB); Jagannathan Pillai v. Kunjithapadam Pillai, Air 1987 SC 1492 and Smt.Gulwant Kaur v. Mohinder Singh, AIR 1987 SC 2251.Smt. Minhon had a right of maintenance which was there on the property of her husband deceased Sh.Munshi Ram and in other words her right to maintenance was pre-existing on the date of enforcement of the Hindu Succession Act,1956.

The Hon'ble Single Jude has held in case Dalip Chand and another vs. Chuhru Ram (supra),that such a right would bring the case within the ambit of sub sec.(1) of S.14 of the Hindu Succession Act, 1956.

Accordingly, Smt.Ramku had become full owner by way of Will which is Ex.P-1 and as such was competent to execute the gift deed Ex.P2 on 25.5.1983.

The upshot of the above discussion is that in view of the categorical law laid down by this Court in case Dalip Chand and another vs. Chuhru Ram (supra), there is no force in the second appeal and the same is hereby dismissed.

August 6,2007(g) **(Rajiv Sharma),J**.